IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

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| UNITED STATES OF AMERICA, | ) | |
| | ) | |
| Plaintiff, | ) | |
| | ) | |
| vs. | ) | Case No.: 15-cr-3051 JB |
| | ) | |
| RICHMOND SAM, | ) | |
| | ) | |
| Defendant. | ) | |

**DEFENDANT RICHMOND SAM'S SENTENCING MEMORANDUM**

Defendant, Richmond Sam, by his attorney of record, Robert J. Gorence, submits this Sentencing Memorandum in preparation for the sentencing hearing on March 31, 2016. Mr. Sam has thoroughly reviewed his Presentence Report (PSR) and, while he takes issue with the Government's version of offense conduct, he has no factual objections to the accuracy of the PSR. The purpose of this sentencing memorandum is to request that the court accept the Fed. R. Crim. P. Rule 11(c)(1)(C) plea and to urge the Court to sentence Mr. Sam at the low end of the agreed upon sentencing range. As the Court is aware from the evidentiary hearing with regard to Mr. Sam's appeal of his detention order, this was a highly contested case with regard to disputed facts. Mr. Sam's investigation in this case revealed the following that had not been uncovered by the FBI:

1. Mr. Sam had been the victim of repeated threats and violence directed against him and his property;

2. On the night of July 30, 2016, Mr. Sam was not intoxicated and was peaceably minding his business at his residence;

3. That the alleged victim in this case and his brothers, close to midnight, began what

would be called an "attempted home invasion," and, when unsuccessful in breaching the residence, the alleged victim and his brothers proceeded to smash a house window and the windows of Mr. Sam's vehicles.

4. Mr. Sam, after holding off the attempted home intrusion, escaped from the back of the house and proceeded to a neighbor's house where he obtained a firearm. In other words, Mr. Sam was not armed in his residence as he had been ordered by virtue of his felony status and being on probation.

5. At the neighbor's house, Mr. Sam attempted to call 911 on multiple occasions but was unsuccessful.

6. After Mr. Sam left armed with a rifle, he stayed on high ground next to a wood pile while he watched the alleged victim and his brothers return to the house.

7. Three other neighbors in the vicinity heard a gunfight ensue, corroborating Mr. Sam's statement to the FBI that he fired at the alleged victim and his brothers only after being fired upon.

8. Perhaps of greatest significance in this case is the odd autopsy findings cursorily set forth in paragraph 17 of the PSR. Although Mr. Sam was at least 15 feet higher in elevation than the alleged victim, the autopsy identified that the alleged victim died from a single bullet which entered his left upper back, went through his left shoulder blade and the left side of his neck, into his oral cavity and exited the right side of his mouth. Given the difference in elevation, this trial would have established great uncertainty as to whether or not Mr. Sam actually fired the fatal shot. Quite conceivably the alleged victim was *accidentally* shot by one of his brothers either in the vehicle or before entering it. This would explain the bizarre behavior of the victim's brothers in not transporting him immediately to a hospital and instead going to a sister's house for a very

lengthy period of time. The argument would have been made at trial that the prolonged stay at the alleged victim's sister's house was an attempt by his brothers to cleanse themselves of his blood and hide other critical evidence, namely their firearm.

The above would have constituted self-defense conduct had this gone to trial and, if believed, would have been the basis for Mr. Sam's acquittal. The plea in this case was achieved after extensive exchange of information and lengthy negotiation. Suffice it to say that the Government's offer is an acknowledgement that there is some veracity in the Defendant's version of events.

With the benefit of the highly contested facts, Mr. Sam acknowledged that there was a factual basis for *negligent* involuntary manslaughter because it is arguable that he was not in danger of death or serious bodily injury when he was hiding behind the wood pile. It is also arguable that Mr. Sam jumped up, armed with a firearm, and prompted the lethal gunfire exchange which would have constituted a possible imperfect self-defense. The true facts in this case are obviously murky due to Mr. Sam's obvious self-interest and the alleged victim's brothers' wild intoxication. The plea best resolved the radical differences in the two disputed versions of offense conduct and minimized the risk of an acquittal for the Government versus the possibility of decades in prison for Mr. Sam. Balancing all, Mr. Sam requests that the Court accept the plea and to sentence him at the low end of the agreed upon sentencing range.

Congress directs the district court to impose a sentence sufficient, but not greater than necessary, to satisfy the statutory purposes of sentencing. 18 U.S.C. §3553(a). In determining the particular sentence to be imposed, the sentencing court must consider: the nature and circumstances of the offense and the history and characteristics of the defendant [§3553(a)(1)]; the need to reflect the seriousness of the offense, promote respect for the law, and provide just punishment for the offense [§3553(a)(2)(A)]; the adequacy of deterrence to criminal conduct [§3553(a)(2)(B)]; protection of the public from further crimes of the defendant [§3553(a)(2)(C)]; the need for educational or vocational training, medical care, or other correctional treatment in the most effective manner [§3553(a)(2)(D)]; the kinds of sentences available [§3553(a)(3)]; the applicable guidelines or policy statements issued by the Sentencing Commission [§3553(a)(4)]; any pertinent policy statements [§3553(a)(5)]; and the need to avoid unwarranted sentence disparities among defendants with similar records with similar conduct [§3553(a)(6)].

Mr. Sam and the United States have made an agreement pursuant to the Federal Rule of Criminal Procedure 11(c)(1)(C) that a specific sentence of 15-21 months is the appropriate sentence in this case. Mr. Sam requests a sentence on the low end of this range. In support of this request, Mr. Sam reiterates that he was not the instigator of the incidents that gave rise to this case. Mr. Sam is highly motivated to support and care for his two children. They are a significant motivation against reoffending.

Mr. Sam has also been well informed that he now has two predicate felony offenses and any future criminal conduct would result in habitual sentencing either by the State, or draconian federal sentencing as a career offender. Mr. Sam now has a life choice of living within the requirements of the law or being incarcerated for a very long period of time. A sentence at the high end of the agreed upon sentencing range will not deter or alter what lies ahead for Mr. Sam. As such, it is requested that he be sentenced to 15 months and that he continue in state and federal supervision and that he be allowed to prove that he can be a law abiding citizen.

Respectfully submitted,

*s/ Robert J. Gorence*
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*Attorney for Defendant Richmond Sam*

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 29th day of March, 2016, I filed the foregoing electronically through the CM/ECF system, which caused the following parties or counsel to be served by electronic means, as more fully reflected on the Notice of Electronic Filing:

David Adams, Attorney for United States of America
(David.Adams3@usdoj.gov)

Jack Burkhead, Attorney for United States of America
(jack.e.burkhead@usdoj.gov)

*s/ Robert J. Gorence*
Robert J. Gorence